IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Bhera Ram. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No.1015/2006 for quashing the proceedings in Criminal Case No.297/1989, pending in the Court of the Additional Chief Judicial Magistrate, Bali, district Pali.

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Date of Order: November 15, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Rajesh Parihar, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Mahesh Bora, for the complainant.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner seeks quashing of criminal proceedings in Criminal Case No. 297/1989 pending in the Court of the Additional Chief Judicial Magistrate, Bali, district Pali (for short, "the trial Court" hereinafter) for the offence under Section 7/16 of the Prevention of Food Adulteration Act, 1954 (for short, "the Act" hereinafter)

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the record of the trial Court.

It is contended by the learned counsel for the petitioner that the sample of the food article was taken on 20-7-1989 and almost seventeen years have elapsed since then but the trial has not concluded, therefore, allowing the proceedings against the petitioner would amount to abuse of process of the Court. He has relied on two decisions of this Court in Mohan Lal Vs. State of Rajasthan, 2000 Cr.L.R. (Raj.) 539; and Moti Lal Vs. State of Rajasthan, 2004 (1) Cr.L.R. (Raj.) 778.

Learned Public Prosecutor submits that the matter is summarily triable. When the matter came to the final stage, on change of the Presiding Officer, de novo trial was ordered and earlier to it, it was the petitioner who requested for analysis of the sample by the Central Food Laboratory and, therefore, the sample was sent to the Central Food Laboratory and the report of the Central Food Laboratory was received on 29-1-2001. Thereafter the prosecution has produced its witnesses and the trial Court recorded the statements of the witnesses. Learned Public Prosecutor further submits that it was the accused-petitioner who requested the sample to be analysed by the Central Food Laboratory and the report received form the Central Food Laboratory shows that the sample does not

conform with the prescribed standard laid down for the cow milk under the Act, 1954 and the Rules made thereunder and, therefore, if any delay occurred, it was because of the procedure provided under the law, for which the complainant/prosecution cannot be blamed as the complainant has produced all the witnesses. Learned Public Prosecutor also submits that on certain occasions, the accused-petitioner failed to appear before the trial Court and remained absent and, therefore, the delay cannot be counted only against the complainant/prosecution.

The prosecution has produced the witnesses in time and their statements have been recorded by the trial Court. The report of the Central Food Laboratory has been received. Therefore, there is no likelihood of further delay if the trial is allowed to proceed.

A Seven Judge Bench of the Hon'ble Supreme Court, in P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, held that the Court cannot fix any time limit as bar beyond which criminal proceedings or trial cannot continue, thereby entitling the accused to be acquitted on the ground of delay. The Hon'ble Apex Court held that prescription of such limitation period would amount to judicial legislation, which is not permissible

Keeping in view the Seven Judge Bench decision of the Hon'ble Supreme Court in P. Ramachandra Rao Vs. State of

Karnataka (supra), the decisions relied on by the learned counsel for the petitioner are of no help to the petitioner.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

mcs